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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

MAG00580P00352US

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on **November 10, 2005**

Signature

Corinne Byk

Typed or printed name

Corinne Byk

Application Number

10/670,036

Filed

September 23, 2003

First Named Inventor

Michael D. Flaszka

Art Unit

2816

Examiner

Terry Lee England

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒

attorney or agent of record.

Registration number **32,273**

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attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

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November 10, 2005

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

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*Total of **One** forms are submitted.

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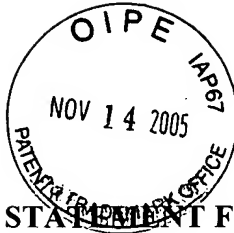
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Serial No. 10/670,036
MAG00580P00352US
PATENT

STATEMENT FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Claims 1-20 are pending in the application, are rejected, and are at issue. The specification is objected to and all of the claims are rejected as based on a non-enabling disclosure and as anticipated or obvious over Saito et al. U.S. Patent No. 6,577,072.

The clear errors in the final rejection stem from the expectation that the application must describe in detail what is conventional and known to those skilled in the art.

Independent claim 1 specifies a loop powered process instrument comprising a control circuit measuring a process variable and developing a control signal representing the process variable. An output circuit for connection to a two-wire process loop controls current on the loop in accordance with the control signal. A power supply circuit is connected to the output circuit and the control circuit for receiving power from the two-wire process loop and supplying power to the control circuit, comprising cascaded charge pump circuits.

The objection to the specification and the §112 rejection relate to the control circuit and the output circuit. Both are conventional features and are sufficiently described. “A patent need not disclose what is well known in the art.” In re Wands, 8 USPQ2d 1400, 1402 (Fed. Cir. 1988).

The specification, under the heading “Background of the Invention” describes general characteristic of process control instruments. The paragraph at page 2, lines 3-14, describes the general characteristics of a loop powered or two-wire transmitter. The invention that is described and illustrated is a loop powered instrument. Page 6, lines 4-8, specify that the instrument can sense

numerous different process variables. The invention is not directed to the type of process variable being sensed. Particularly, the instrument generally comprises a control circuit which “may generally be of any known design for measuring a process variable and developing a control signal representing the process variable”, page 7, lines 4-7. The output circuit 28 is described as “conventional in nature and includes a control block 38 . . .” that “. . . controls the 4-20mA loop current in proportion to the measured process variable in accordance with the control signal on the line 36, as is well known”. See page 7, lines 9-14. The invention is particularly directed to the instrument including the power supply circuit 30 which receives power from the output circuit 28 and supplies power to the control circuit 26.

The standard under 35 U.S.C. §112 is that the specification contain a written description sufficient to enable any person skilled in the art to make and use the same. As described in the specification, how the control circuit measures the process variable and develops the control signal is conventional in nature and is well known. Likewise, how the 4-20mA current is varied is conventional and well known. The disclosure is sufficient for any person skilled in the art to make and use the same. Moreover, with the Amendment “A” filed on April 25, 2005, applicant supplied a document describing how such a conventional device can operate. Indeed, the document “4-20mA Current Loop Primer” describes in the second column on the first page that “[t]he loop’s operation is straightforward: a sensor’s output voltage is first converted to a proportional current, with 4mA normally representing the sensor’s zero-level output, and 20mA representing the sensor’s full-scale output”. That aspect of the invention is well known to those skilled in the art and is described

sufficiently in the specification to enable one skilled in the art to make and use the invention.

As applicant has satisfied the enablement standard, the objection to the specification and rejection of the claims based on a non-enabling disclosure is clear error.

Moreover, with respect to the rejection of the claims under §112, the specification states that the control block 38 is connected in series with a sense resistor R and the power source 20, see Fig. 1 and page 7, lines 9-10. These three elements connected in series define a loop. The block 38 uses the resistor R to sense loop current and controls the 4-20mA loop current in proportion to the measured process variable in accordance with the control signal on the line 36. How the control block 38 controls loop current is well known, as evidenced by the above-referenced “primer”. The other circuit elements discussed in the action are pertinent to the overall invention, but do not pertain to the control of loop current. The control circuit operation is sufficiently described in the specification such that the disclosure is enabling to one skilled in the art. The application need not disclose more, see In re Wands. The expectation that more is required is clear error.

With respect to the prior art rejection of the claims, Saito et al. is not remotely related or relevant to any claim herein. Saito et al. relates to a power supply. The power supply is connected to an AC input and includes output terminals. Saito et al. is not directed to a process instrument, let alone a loop powered process instrument. The power supply does not measure any process variable. While current is variable, it is not a process variable in the context of the claimed invention. There is no two-wire process loop. Nor is there any output circuit controlling current on any loop in accordance with a control signal. The action identifies element 1018 of Saito et al. as

a charge pump circuit. In fact, this circuit is a step-down circuit which performs on/off control to an LED lamp as well as a voltage-step down function and constant current control. This is not a cascaded charge pump circuit receiving power from a two-wire process loop and supplying power to a control circuit, as recited in the claim.

The action inaccurately describes what is taught by Saito et al. This is clear error.

The specific differences between the individual claims and Saito et al. are discussed in the previously filed Amendment "A" at pages 4-7 and in accordance with the guidelines for the Pre-Appeal Brief content of arguments, are not repeated herein. The clear error relating to the mischaracterization of the teachings of Saito et al. carries over to the claims rejected over Saito et al.


Because Saito et al. does not disclose each and every element of claims 1-20, arranged as in the claim, there is no anticipation of any claim. Moreover, because Saito et al. does not suggest the features of any of the claims, any obviousness rejection is also improper.

For the above reasons, the rejection ought be reversed and the claims allowed.

Respectfully submitted,

Date: November 10, 2005

By


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